

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 512 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANILAL M DOSHI

Versus

SURESHCHANDRA H VRUJLAL

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Appearance:

MR ARUN H MEHTA for Petitioners

MR RM VIN for Respondent No. 1

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CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 04/02/98

ORAL JUDGEMENT

1. The appellants are the original plaintiffs. They had filed Special Civil Suit No. 18/1974 against the respondents - original defendants in the Court of Civil Judge (S.D.) - Godhra. The plaintiffs claimed recovery of possession of the suit house on the basis of a registered deed dated 01/11/1933. The suit was dismissed by the learned Civil Judge (S.D.) - Godhra by his judgement and decree dated 30th December 1978. The

original plaintiffs are in appeal against the said judgement and decree.

2. The facts leading to the present litigation between the parties are as follows :-

The suit house bearing city survey No.2525 is situated at Lunavada, Dist. Panchmahals. The said house originally belonged to one Doshi Mahasukh Zaverchand, who bequeathed that house to his daughter in-law Bai Manek under a will dated 25/1/1931. Bai Manek executed a registered deed dated 1/11/93 in favour of one Muljibhai Virchand, the father of the plaintiffs (Exh.. 41) It appears from the contents of the deed that the said Muljibhai Virchand was claiming to be the next reversioner. The deed also refers to the disposition made by Mahasukhbhai in his will with respect to the suit house, but it is not clear what the disposition was. However, after referring to the said disposition of the suit house and the subsequent arrangement made with respect to it, Bai Manek stated as follows :-

"You are exclusive owner of this house. Neither I nor anybody has right over it. After my death, you are to perform all ceremonies for a period of 12 months according to the custom and to take possession of the house. I cannot dispose of that house in any manner such as by sale, mortgage, gift or charity etc. and I will not create any charge on that house. So, in view of your / family rights, the house is to be handed over to you. After my death, my daughters Mani and Babli who are minor, will be entitled to reside in the said house till they get married."

3. The plaintiffs' case is that the said deed was a sale deed and they claimed title to the suit house on the basis that the said deed is a sale deed. It is not in dispute that Bai Manek continued to reside in the said house. It appears that in 1963 city survey was carried out and it is the case of the plaintiffs that, on 20/11/1963, Bai Manek gave a statement before the City Survey Inquiry Officer in which she admitted the execution of the said deed dated 01/11/1933 and so the officer made a note of it in the city survey record. Thereafter, due to instigation of her son-in-law, Bai Manek made an application raising objection, but she was not successful. On 28/3/1964, the son-in-law of Bai Manek got executed a registered sale deed of the suit house from Bai Manek in his favour, but Bai Manek has no right to execute such a sale deed. Bai Manek died on

17/4/74. The defendants No.3 and 4 were the daughters of Bai Manek and defendants No.1 and 2 were the sons of defendant No.3. According to the plaintiffs, after the death of Bai Manek, the defendants had no right in the suit house and the plaintiffs claimed possession of the suit house from them asserting their right under the deed dated 01/11/1933. The plaintiffs served a notice dated 4/5/1974 and on defendants' refusal to comply with the same, they filed the suit for recovery of possession of the suit house.

4. All the defendants filed a joint written statement. They raised various contentions. They said that, in view of the will of Mahasukhbhai Zaverchand dated 25/1/1931, Bai Manek had become owner of the suit house. They denied that, on 1/11/1933, Bai Manek sold the suit house to plaintiffs' father Muljibhai. They alleged that Muljibhai had got executed a deed dated 1/11/1933 by making mis-representation that Bai Manek had only a right of residence in the suit during her life time and after her death, as per the will of Mahasukhbhai Zaverchand, Muljibhai was the owner of the suit house. They alleged that her thumb impression was obtained on that document by undue influence. Bai Manek was an illiterate lady and did not know its contents. The defendants contended that the said document was ineffective, void and without any consideration. When Muljibhai produced the said document in the city survey inquiry in 1964, Bai Manek obtained its copy, and at that time, she came to know about its contents. On 21/3/64, she gave a notice to the plaintiffs and in the reply dated 5/4/64, the plaintiffs stated that, as per their caste custom, their father had objected to the will of Mahasukhbhai and Bai Manek and trustees of the will had accepted the objection as valid and so, as a result of that objection, the deed dated 1/11/1933 was executed in favour of the plaintiffs' father. The defendants therefore contended that the plaintiffs were estopped from pleading a case contrary to that. The defendants pleaded that the deed in question was in the nature of a will, which can come in effect only on death of Bai Manek and, during her life time, she had right to dispose of the property in any way she liked and, as such, she had executed the sale deed dated 20/3/1964.

5. At the end of the trial the learned Judge recorded these findings. The plaintiffs have proved the deed dated 1/11/1933. But the said document was without consideration and was in the nature of a will. The plaintiffs had therefore failed to prove that they became owners of the suit property by virtue of the said deed.

In view of the said finding, the learned Judge dismissed the suit. It is not necessary to refer to the other issues raised in the suit and findings recorded by the learned Judge on the same.

6. Mr.A.H.Mehta, learned counsel for the appellants, after stating the facts leading to the present litigation, submitted that the plaintiffs' case rested on the deed dated 1/11/1933 being a sale deed and hence, the main question to be decided is whether the said deed was a sale deed or not. The trial Judge, after referring to the definition of 'consideration' given in section (2) of the Indian Contract Act, came to the conclusion that the deed in question was without consideration and, hence, void in view of the provisions of section 25 of the said Act. Surprisingly however, in the judgement of the trial Court, there is no reference to section - 54 of the Transfer of Property Act, which defines 'sale'. The said section so far is relevant reads as follows :-

54. " Sale " is a transfer of ownership in exchange for a price paid or promised or part paid and part promised".

7. Now, the price paid or promised means money consideration. As held by the Supreme Court in the case of Commissioner of Income Tax, Andhra Pradesh vs. M/s Motors & General Stores (P) Ltd. (AIR 1968 SC 200), the presence of money consideration is an essential element in a transaction of sale and if the consideration is not money, but some other valuable consideration it may be an exchange or barter, but not a sale. In the present case, the specific case of the plaintiffs was that the deed in question was a sale deed. However, admittedly there was no money consideration which is an essential element in a transaction of sale. The plaintiff's case that the deed in question was a sale deed cannot therefore be accepted. Whatever else may be the nature of the deed, it is certainly not a sale deed and if it was not a sale deed, the plaintiffs got no right under it and what Bai Manek did with the property subsequently is no concern of theirs. The plaintiffs had no right, title or interest in the property and had no right to recover possession of the same from the daughters of Bai Manek. The learned Judge rightly dismissed the plaintiffs' suit. There is no substance in the appeal and it is dismissed with no order as to costs.

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